

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

**NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING
MOTION FOR SUMMARY JUDGMENT RE NUISANCE**

Defendants respectfully submit the decision of the Sixth Judicial Circuit Court of South Dakota in *State of South Dakota ex rel. Ravensborg v. Purdue Pharma L.P. et al.*, No. 32CIV18-000065 (Exhibit A), as supplemental authority relevant to Defendants’ Motion for Summary Judgment Re Nuisance (“Nuisance Motion,” Dkt. No. 1003–04).

In the *Purdue Pharma* litigation, the State of South Dakota brought public nuisance claims against the same distributors who are defendants in this case, alleging that the distribution of prescription opioids created a public nuisance. The Circuit Court dismissed the State’s claims, holding that “public nuisance law does not apply to cases involving the sale of goods” because otherwise, “[n]uisance would [] become a monster that would devour in one gulp the entire law of

tort.” Ex. A at 19, 23; *see also id.* at 18–24. The Circuit Court thus rejected liability under a public nuisance theory “where one party had sold to another party a product that later is alleged to constitute a nuisance.” *Id.* at 18:13–15.

The Circuit Court’s decision further supports Defendants’ argument that Plaintiffs cannot establish the elements of a public nuisance claim here. Dkt. No. 1004 at 8–13.

Dated: January 19, 2021

Respectfully Submitted,

McKesson Corporation

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 19th day of January, 2021, the foregoing “NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING MOTION FOR SUMMARY JUDGMENT RE NUISANCE” was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

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